IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.358 of 2003
With
Civil Application No.546 of 2003

Shri Dastagir Bapu Mahat — Appellant
Vs.
Shri Ranga Krishna Khot — Respondent

Mr.V.B.Rajure for appellant.
Mrs.S.A.Mudbidri for resp.

CORAM: B.H.MARLAPALLE, J.

April 04, 2007.

P.C.

. Heard Mr.Rajure, the learned counsel for the appellant and Ms. Mudbidri, the learned counsel for the respondent. This Second Appeal filed by the original defendant arises from the decree passed by the learned Civil Judge Junior Division at Peth Vadgaon allowing Regular Civil Suit No.87 of 1992 on 31/3/1999 and duly confirmed by the learned 5th Addl. District Judge at Kolhapur vide his judgment and order dated 25/7/2002 in Regular Civil Appeal No.223 of 1999.

. Regular Civil Suit No.87 of 1992 came to be filed by the plaintiff, the present respondent for the relief of redemption and reconveyance and possession of the suit land i.e. agricultural land

admeasuring 64 Rs. from the old Revision Survey No.30 (new Gat No.30/1 admeasuring 24 Rs., 30/2 admeasuring 20 Rs. and 30/3 admeasuring 20 Rs.). The plaintiff had handed over the suit land to the defendant on the basis of the mortgage deed signed between the parties on 22/10/1980 (Exh.58). He claimed that he had borrowed an amount of Rs.20,000/- from the defendant and he was to repay the said amount within a period of 15 years. At the end of this period of 15 years if he had failed to repay the amount or offered to repay the amount, the land would stand sold to the defendant and if he had offered to repay the amount within this period of 15 years, he was entitled for the redemption of the mortgage deed and for being put in possession of the suit land. The defendant filed his written statement and opposed the suit contending that the transaction dated 22/10/1980 was not a mortgage transaction but indeed it was a transaction of out and out sale. It was further pointed out that no interest was charged to the plaintiff on the amount of Rs.20,000/-, the land revenue was being paid by the defendant after the land was put in his possession and his name was entered in the ownership column in the record of rights and, therefore, it was clear that the suit

land was sold to the defendant. The trial Court on assessing the oral and documentary evidence has held that the document at Exh. 58 was a mortgage deed and the plaintiff had discharged his burden by issuing a notice at Exhibit 41 which was not accepted by the defendant and, therefore, returned by the post office. In the said notice he had also made his offer to repay the mortgage amount of Rs.20,000/-. The lower Appellate Court on reassessment of the evidence has agreed with the findings and the reasoning in support thereof as recorded by the trial Court.

. The recital of the document at Exhibit 58 clearly indicated that the suit land was mortgaged for a period of 15 years i.e. from 1981-82 to 1995-96 for the loan transaction of Rs.20,000/- and this loan amount was for repayment of debts. It was further agreed that the loan amount was to be returned within a period of 15 years i.e. by March 1996. It was further agreed that if the loan was not repaid at any time between 1990-91 to 1995-96 it would be presumed that the deed at Exhibit 58 would be treated as a sale transaction and the land would stand transferred to the defendant as having been

sold. The document at Exhibit 58 further clearly states that the plaintiff had mortgaged the suit land to one Dattatray Mahadeo Dadge and his brother Ramchandra for an amount of Rs.14,000/-. The said amount was to be returned and the land was to be released from the possession of these two brothers Dattatraya and Ramchandra. There is nothing in this document in support of the contention of the defendant that the transaction was an out and out sale transaction.

. The notice at Exhibit 41 was issued and it was sent to the defendant by registered post A.D. The postman (p.27) Shri Balasaheb Shankar Shinde - PW 3 was examined at Exhibit 54 and he stated that in the year 1992 he had gone to the house of the defendant and tendered the registered envelope (Exh. 55) by visiting the house of defendant on six occasions and every time it was offered to him but he refused to accept the same. Consequently, PW 3 put his endorsement of refusal on the envelop at Exhibit 55 and returned to the post office. He further stated that Exhibit 55 carried the correct address of the defendant and he had offered the registered envelope to be served on the defendant and the defendant had

refused to accept it. The notice clearly indicated the offer of the plaintiff to repay the sum of Rs.20,000/- and demand of return of the land by cancelling the mortgage deed. The trial Court rightly held that the notice was properly served on the defendant and he could not rebut the presumption regarding the refusal of notice.

. The lower Appellate Court reconsidered the evidence of the parties and agreed with the view taken by the trial Court that the transaction at Exhibit 58 was a mortgage deed and it was not a sale transaction. The defendant was not paid any interest on the loan amount of Rs.20,000/- because the suit land was handed over to the defendant and he was cultivating the same. Obviously the income from the suit land was derived by the defendant. The entries in the record of rights made in favour of the defendant in respect of the suit land were undertaken on the basis of the document at Exhibit 58 by the revenue authorities and that by itself could not be the sole proof to hold that the transaction at Exhibit 58 was an out and out sale transaction. This reasoning given by the lower Appellate Court cannot be termed as perverse or illegal. Hence there is no

substantial question of law that arises for consideration in this Second Appeal. Consequently the same must fail at the threshold.

. The appeal is dismissed in limine.

. Civil application does not survive and the same stands rejected. Ad-interim order stands vacated.

(B.H.MARL